

U.S. Patent Application Serial No. 09/600,434
Applicant: Pascal Portrait

REMARKS

This Amendment with the accompanying remarks is believed to be fully responsive to each point raised by the Examiner. Review and consideration is respectfully requested in view of the following remarks.

Briefly reviewing the Non-Final Office Action, Claims 1, 2, 4-6, 8, 10, 12, 13 and 16-21 are currently pending in the application. Claim 21 is objected to for depending from a canceled claim. Claims 1, 2, 4-6, 8, 10 and 20 are rejected under 35 U.S.C. § 103 for obviousness over *Lashyro* in view of *Boivin*. Claims 12, 13, 16-19 and 21 are rejected under 35 U.S.C. § 103 for obviousness over *Lashyro* in view of *Boivin* and *Kontz*.

Claim 8 is amended to delete the term "method" and substitute "mechanism" therefor. Also, Claim 21, objected to for depending from a previously canceled Claim 7, has been canceled.

In regard to the obviousness rejections of Claims 1, 2, 4-6, 8, 10, 12, 13 and 16-20, the Examiner has not shown that all the elements of a prima facie case of obviousness have been met. Applicant respectfully traverses the rejections and requests reconsideration. Applicant has reviewed the cited art and has found that nothing therein which would teach or suggest modifying the cited art in the manner proposed by the Examiner.

The prior art does not teach the present invention because the Examiner's cited combination does not result in the claimed invention as claimed in Claims 1, 4, 5, 8, 10 and 20.

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The cited combination does not result in the claimed invention because neither *Lashyro* nor *Boivin* include die members having a protruding portion and a corresponding recessed portion capable of forming the article receiving cells as claimed in Claim 1 and 8. Claims 1 and 8 require that the die members “inter engage” when a carton is placed between the die members. In particular, Claims 1 and 8 require that the protruding portion of one die member be received in the recessed portion of the other die member to form an article receiving cell. Moreover, Claims 1 and 8 also require that the article receiving cell, formed by the protruding and recessed portions, receive a group of articles.

The Examiner asserts that the complementary dies in *Boivin* form packages from blanks with protrusions that push open parts of the blank. However, the complementary dies in *Boivin* do not include a recessed portion as claimed in Claim 1 and 8. Moreover, because the dies in *Boivin* do not include a recessed portion, the dies in *Boivin* can not form the article receiving cell claimed in the present invention. The portions of the blank pushed open by the dies in *Boivin* do not form cells for receiving articles. Reconsideration of the rejection of Claims 1 and 8 for obviousness is respectfully requested because the cited combination does not result in the claimed invention.

Reconsideration of the rejection of Claim 4 for obviousness is also respectfully requested because the combination of *Lashyro* and *Boivin* does not result in the invention as claimed in Claim 4. The Examiner asserts that the two lines, 12 and 13, of *Lashyro* disclose the channels

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claimed in the present invention. Claim 4, however, also recites that the channels be grouped to correspond with the number of articles to be placed in a cell as a group which is not taught by the cited combination. The lines of *Lashyro* are not grouped to loaded articles as a group into one cell.

The articles on lines 12 and 13 in *Lashyro* are not grouped together to be placed into a cell because the articles of each line are not commingled while in lines. The articles of line 12 and the articles of line 13 are grouped together only after they have been placed separately in the container. Therefore, reconsideration is requested because the articles of lines 12 and 13 are not grouped together to be placed in the cell as a group as claimed in Claim 4.

Claim 5 recites the limitation of a second article receiving cell formed in the same carton with the first article receiving cell. Claim 5 also requires that the two cells be spaced from one another. In *Lashyro*, however, the portions of each carton defined by the divider sheet do not constitute first and second article receiving cells arranged as claimed in Claim 5 because each portion of the carton is not spaced from one another. Reconsideration of the rejection of Claim 5 for obviousness is respectfully requested because the cited combination does not result in the invention as claimed in Claim 5.

The cited art also does not teach the present invention as claimed in Claim 10 because the combination of the cited art does not result in the claimed invention as claimed in Claim 10. Claim 10 recites the limitation of an endless series of channels. The cited art, however, discloses

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a finite number of lines of articles. Therefore, reconsideration of Claim 10 is respectfully requested.

Applicant has also amended Claim 10 to more particularly recite that each channel grouping corresponds to a “group” of articles to be loaded into “one of the article receiving cells”. Claim 10 has been amended to clarify that each grouping of channels is spaced relative to one another to align each channel grouping with an article receiving cell. The cited combination does not result in multiple groups of channels wherein each channel group is aligned with an article receiving cell. Reconsideration of amended Claim 10 is respectfully requested.

Claim 20 calls for rotation of the articles held in the support means during movement of the support means. In *Lashyro*, the articles on lines 12 and 13 do not rotate due to movement of the lines 12 and 13. Also, in *Kontz*, movement of the structure supporting the labels does not cause the labels to rotate. Reconsideration of Claim 20 is requested because the cited combination does not teach the invention of Claim 20.

The Examiner’s cited combination also does not teach the invention as claimed in Claims 12, 16, 18 and 19 because the cited combination does not result in the claimed invention as claimed in Claims 12, 16, 18 and 19. In regard to Claim 12, the combination of *Lashyro*, *Boivin* and *Kontz* does not result in the claimed invention because the cited combination does not include a support means as claimed in Claim 12. Claim 12 recites the limitations that the support means includes a channel with a support surface, that the article be rotated while in the support

means, and that the support surface of the channel correspond with the exterior surface of an article. Claim 12 further requires an abutment means formed in the support means.

The cited combination does not result in the invention claimed in Claim 12 because the lines 12 and 13 of *Lashyro* do not include an abutment means formed in the surface of the lines 12 and 13. Also, the apparatus of *Kontz* could not rotate the articles on the lines 12 and 13 of *Lashyro*. Moreover, the lines 12 and 13 of *Lashyro* do not include a surface conforming to the exterior of an article where the articles are allowed to rotate as claimed in Claim 12.

Reconsideration of Claim 12 is respectfully requested because the cited combination does not result in the invention claimed in Claim 12.

Claim 16 requires the support means to move in a plane parallel to a single elongated member to cause the articles to rotate. In *Kontz*, the stack of nested labels is rotated by a plurality of powered rollers. The powered rollers of *Kontz* would not move in a parallel plane relative any portion of the support structure of *Kontz* to cause the labels to rotate. The movement of line 12 and 13 of *Lashyro* also would not cause the articles to rotate.

Moreover, *Kontz* is directed to rotating the end label of a stack of labels nested with one another. Only after the end label is rotated is it then placed upon an article as shown in Fig. 3. Therefore, the cited combination with *Kontz* does not result in the claimed invention of Claim 16 because Claim 16 requires that the elongated member abut a portion of the article in order to rotate the article. The powered rollers of *Kontz* never abut any portion of the article in any

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manner because the powered rollers only contact the labels which are displaced from the articles. Moreover, *Kontz* does not disclose rotating the articles. Reconsideration of Claim 16 is requested because the cited combination does not teach an elongated member abutting a portion of the article where the support means moves in order to rotate the article.

Claim 18 recites an abutment means formed from an upper edge of a channel. The Examiner relies upon the lines 12 and 13 of *Lashyro* for disclosing the channels and then relies upon *Kontz* for disclosing fingers 55 for contacting a seam 15 of a label. However, the fingers 55 of *Kontz* can not be formed from an edge of the lines 12 and 13 of *Lashyro*. Reconsideration of Claim 18 is respectfully requested because the cited combination does not result in the claimed invention.

Claim 19, which depends from Claim 1, is directed to the combination of orienting the articles in combination with separating and loading the articles into the carton. In particular, Claim 19 requires that the article, rather than the label, be rotated in the support means, and that an abutment means be formed in the support means. The cited combination does not result in the invention claimed in Claim 19 because the lines 12 and 13 of *Lashyro* do not include an abutment means formed in the surface of the lines 12 and 13 to orient the articles for packing. Also, the apparatus of *Kontz* can not rotate the articles on the lines 12 and 13 of *Lashyro*. Reconsideration of Claim 19 is respectfully requested because the cited combination does not teach the invention claimed in Claim 19.

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Furthermore, reconsideration of the obviousness rejection of Claims 1, 4, 5, 8, 10 and 20 is respectfully requested because the Examiner has not examined the claims of the present invention based upon whether there is a suggestion or motivation in the cited references for the claimed combination of elements. Obviousness cannot be established by combining the teachings of the cited art, absent some teaching or suggestion from the cited art supporting the combination. *See In re Dembiczak*, 175 F.3d 994; 50 U.S.P.Q. 2d (Fed. Cir. 1999). Thus, the Examiner in the present case has failed to establish a prima facie case of obviousness because the Examiner's cited art does not provide some reason, suggestion or motivation, as a whole, for the person of ordinary skill to have combined or modified the Examiner's cited references.

Applicant asserts that if a cited combination of references is silent as to a particular element, such as a receiving portion in a die, a pair of displaced receiving cells of a single carton, the grouping of channels to group articles to be placed into an article receiving cell, or the rotation of the articles by forward movement of the channels, than the particular cited combination of references does not teach or suggest the claimed invention. Moreover, references disclosing only the pushing open of parts of the blank do not make obvious the forming of an article receiving cell by receiving a portion of a blank within a recessed portion of a die member as claimed in the present invention. Furthermore, a reference disclosing only a pair of lines, as disclosed in *Lashyro*, does not make obvious the grouping of lines to form a group of articles to be loaded into an article receiving cell as a group. There is no suggestion or motivation in

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Lashyro that the lines can be combined to group articles to be loaded into a single cell.

References disclosing only a spacer between adjacent cells also do not make obvious article receiving cells of a single carton spaced from one another. Therefore, the cited references fail to suggest the formation of an article receiving cell, the spacing of a pair of cells of a single carton, grouping of channels to group articles to be loaded as a group, and rotation of the articles by forward movement of the channels, as claimed in Claims 1, 4, 5, 8, 10 and 20.

Furthermore, reconsideration of the obviousness rejection of Claims 12, 16, 18 and 19 is respectfully requested because the Examiner has not examined the claims of the present invention based upon whether there is a suggestion or motivation in the cited references for the claimed combination of elements. The present invention is directed to orienting articles by rotating the articles to be packaged into a cell of a carton. Neither *Lashyro* nor *Boivin* provide some reason, suggestion or motivation to combine one another because neither reference discloses rotation of the articles as claimed in Claims 12 and 19. *Lashyro* merely discloses articles of a single line being grouped to be loaded into the carton. *Boivin* merely rotates the labels to orient the labels so that they may be subsequently applied to the article in a more efficient manner. *Boivin* does not disclose packaging labeled articles. Therefore, *Boivin* does not provide a motivation or suggestion that the articles, once having received an oriented label, may be loaded into a carton such that the labels are oriented in any particular way.

Moreover, in regard to Claim 16, neither reference provides a motivation nor a suggestion

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to utilize movement of the support means in combination with a single elongated member to effect rotation upon the articles. In *Lashyro*, there is no reference to utilizing the movement of the lines to rotate the articles in each line. Also, in *Boivin*, the articles are not rotated in any manner. To the extent the labels themselves are rotated, the labels are not rotated by movement of the support structure relative an elongated member.

There in also no suggestion or motivation in the cited combination in regard to Claim 18 to utilize an edge of either of the lines 12 and 13 in *Lashyro* to use as an abutment to restrain rotation of the articles because there is no disclosure to rotate the articles. In *Boivin*, the fingers are not formed from the support structure supporting the labels.

As to the above noted combination of elements of the present invention, the Examiner's references fail to teach the present invention as well as provide a motivation or suggestion to modify the cited art as the Examiner has suggested. And for the reasons advanced above, it is urged that the Applicant's invention is unobvious over the prior art. Therefore, reconsideration of the rejected claims based upon obviousness is respectfully requested.

Applicant asserts that the remaining dependent claims are otherwise at least allowable based upon allowable base claims. Reconsideration is respectfully requested.

Based on the forgoing, it is submitted that Claims 1, 2, 4-6, 8, 10, 12, 13 and 16-20 comply with the Examiner's requirements and are in condition for allowance. Applicant asserts that the present invention is patentably distinguishable over the cited prior art. Should any minor

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points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

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